UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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Rowena Drennen, *et al*,

Plaintiffs,

v. 23 Civ. 3385 (JPO)

CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON, *et al*,

Remote Conference

Defendants.

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New York, N.Y.
July 11, 2023
3:10 p.m.

Before:

HON. J. PAUL OETKEN,

District Judge

APPEARANCES

WALTERS RENWICK RICHARDS SKEENS & VAUGHAN, P.C.
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BY: FRED WALTERS

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Attorneys for ResCap Liquidating Trust
BY: VIVEK CHOPRA

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Attorneys for Lloyds of London Defendants
BY: GREGORY SHAW

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Attorneys for Twin City Insurance
BY: CARA DUFFIELD

(Appearances Continued)

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Attorneys for Continental Insurance
BY: PATRICK M. KENNELL

CAHILL GORDON & REINDEL
Attorneys for Swiss Re
BY: THORN ROSENTHAL

STEPTOE & JOHNSON
Attorneys for Clarendon National
BY: JOHN O'CONNOR

HANGLEY ARONCHICK SEGAL PUDLIN & SCHILLER
Attorneys for Steadfast Insurance
BY: RONALD SCHILLER
SHARON McKEE

KAUFMAN BORGEEST & RYAN LLP
Attorneys for St. Paul Mercury Insurance Company
BY: PATRICK STOLTZ

ARNOLD & PORTER
Attorneys for North American
BY: KENT YALOWITZ

(Case called)

THE DEPUTY CLERK: Starting with the counsel for Kessler settlement class, please state your name for the record.

MR. WALTERS: Fred Walters.

MR. CHOPRA: Good afternoon, your Honor. This is Vivek Chopra for the ResCap Liquidating Trust, also plaintiff.

MR. LAHR: Good afternoon. This is Gregory Lahr from Hinshaw Culbertson on behalf of the Lloyd's defendants.

MS. DUFFIELD: Cara Duffield from Wiley Rein, counsel for defendant Twin City.

MR. KENNELL: Patrick M. Kennell, of Kaufman Dolowich for defendant Continental.

MR. O'CONNOR: Good afternoon. John O'Connor of Steptoe Johnson for Clarendon National.

MR. ROSENTHAL: Thorn Rosenthal from Cahill for Swiss Re.

MR. SCHILLER: Ronald Schiller with my colleague, Sharon McKee, Steadfast Insurance.

MR. STOLTZ: Good afternoon, your Honor. Patrick Stoltz of Kaufman Borgeest & Ryan on behalf of defendants St. Paul Mercury Insurance Company.

MR. YALOWITZ: Kent Yalowitz and Carmela Romeo, Arnold & Porter for North American.

THE COURT: I think that's everyone.

Again, this is Judge Oetken. Let me just confirm, is there anyone else who wanted to identify yourself for purposes of potentially speaking on this conference today?

(Pause)

THE COURT: All right. Welcome everyone. This is a follow-up to the conference we had back in May to address the case and where we go from here. You gave me helpful background on the case in that conference. Judge Jones' decision on summary judgment was issued on December 21 of 2022. The parties have now filed their objections to his decision, which is actually a report and recommendation. I see on the docket, it looks like the objections are essentially at Docket Numbers 92 to 111 filed on May 22, and then responses to the objections filed on July 7 or at, I believe, 149 and 161 to 179.

So I believe the purpose of today was to talk about further scheduling. I'm not in a position to tell you when I'll be issuing my decision on the objections and ultimately the decision on summary judgment so that you will know what exactly is going to be tried. But I believe the parties' view was that it made sense to have something in the calendar in 2024 for a jury trial in the case.

Let me start by asking whether based on the objections and responses, and I know you all have been working hard on these, is there any reason to think that we know more about what the length of the trial is likely to be? I assume there

weren't a lot of surprises here. Do you still think the length of the trial may be three or four weeks, something like that?

MR. CHOPRA: Your Honor, this is Vivek Chopra for the trust. Could I go first, your Honor?

THE COURT: Sure.

MR. CHOPRA: I think that estimate still holds. I've looked at who might appear live, who could appear through dep designations. The trust thinks we could put our case on, inclusive of cross and openings in about four-and-a-half trial days. So I kind of assume, given what I know about the case, that 15 trial days makes sense.

If I could make one other remark on that, there are about eight substantive objections and corresponding responses. Only one set of objections is fully case dispositive. Though, there are objections that could shorten the trial or be case dispositive for some of the excess insurers. Given all of that, we would greatly appreciate setting that trial date so that we can alert witnesses, et cetera, about it, given the age of the case.

So we kind of renew our request to get a trial date set and then allow the parties to meet and confer about run up pretrial dates for the joint pretrial order and for other motions *in limine*, et cetera.

THE COURT: While you're speaking, Mr. Chopra, one question I have, and this might be a little bit out of the

blue, I don't think I'll be granting any of the case dispositive motions for summary judgment that are noncoverage decisions.

One of the things that Judge Jones decided is a question for the jury trial is the reasonableness of the Kessler settlement. I guess I'm just curious about that one, because that strikes me as something that is likely to take some time in the trial. Where does that come from? I haven't dug down into the papers enough to know. Is that based on something in policy language about reasonable settlement? I guess I'm wondering why I can't say on summary judgment that it's a reasonable settlement.

Mr. Chopra can answer and then, Mr. Walters, you can chime in.

MR. WALTERS: Thank you.

MR. CHOPRA: Your Honor, as you can tell, it's a contested issue. It's not ours, right, the trust. That's a contested issue between the Kessler class and the insurers.

But the short story of it is that the reasonableness of the settlement is an issue under New York common law. The settlements that are made have to be reasonable. When you'll get into the papers you're going to see that there's briefing both on whether the bankruptcy court's approval of the plan and the settlement basically precludes the insurers from litigating that issue here. Judge Jones held it did not, and there's an

objection out to that and obviously a response.

Then you are also going to see briefing about whether it's *per se* reasonable. That is that there's enough evidence that the Court could decide on summary judgment. Judge Jones said no, but there's an objection and a corresponding response to that. I think once you get into the papers it will be clear to you what the basis was for those rulings and the objections and responses.

The point on trial length is a good one. If the Court does decide that the reasonableness of the Kessler settlement cannot be re-litigated or it decides that it's not worth what it's supposed to be worth, because there's motions on that as well. If the Kessler settlement is not at issue at trial, maybe that's the safest way to say it, the trial length would be considerably shortened. The number of defendants involved would be a lot smaller also because you wouldn't have most of the excess still involved.

MR. WALTERS: Fred Walters here, your Honor, for the Kessler class.

I think Mr. Chopra, although he is correct, his trust isn't engaged in that, but I think his recitation of the two different issues with respect to the Kessler settlement are, in essence, correct. One is the procedural, we believe bar to the insurance carriers now contesting what was already decided, and that's been fully briefed below before Judge Jones and also is

the subject to objections here and responses.

And then the second reason is the second motion for summary judgment that was filed by the Kessler class separate and apart from the procedural one. It was one that was as a matter of law it was reasonable for the reasons stated. Again, Judge Jones said that was a disputed fact issue, as he did with the first one.

So and as it stands right now those two issues would be for trial unless your Honor decides to do differently after you review the extensive briefing on both of those issues.

Mr. Chopra is right, if your Honor would change the rulings of Judge Jones with respect to either of those tests for reasonableness, it would shorten the length of the trial for the two reasons that Mr. Chopra has mentioned.

THE COURT: Thank you.

MR. WALTERS: Did that help your Honor answer those questions?

THE COURT: Yes. Thank you.

Did one of the defense counsel want to address that?

MR. YALOWITZ: I did. Thank you very much, your Honor. This is Kent Yalowitz from Arnold & Porter.

I just wanted to add two things to what Mr. Chopra and Mr. Walters said. The first thing is there are also two objections from the defendants that might pretermit either all or the vast majority of the issues involving the Kessler

settlement. One of those has to do with the insurability and coverage of the settlement on grounds of public policy. Public policy doesn't allow punitive damages indemnification in New York. And the other has to do with the release that the insured gave in the context of the settlement. As with the objections there are also responses. So there are four legal issues or summary-judgment-style issues that anyone of which may pretermit litigation of the Kessler settlement.

The second thing that I wanted to raise with the Court and, you know, I don't think that we need to get into it unless or until the Court is finished with at least drilling into the summary judgment issues is that what you might call the Kessler issues which involve the reasonableness of the settlement, the good faith of the insured in the context of settlement and whether it fulfilled its cooperation clause and also whether the insured engaged in willfulness conduct, all three of those issues, which are fact issues. One of which, the willfulness conduct was not the subject of a summary judgment motion. Those all might be, if they have to be tried, they might be appropriate for bifurcation, because they are really quite different than the coverage issues that the trust has been focused on. We had some informal discussion about that from time to time, and I would want to socialize that with the plaintiffs. If we could either reach agreement on a recommendation or have competing recommendations from the Court

about that, that might also be something to consider.

THE COURT: When you say "socialize that issue," you mean the issue of severing the trial?

MR. YALOWITZ: Correct.

THE COURT: OK. While I have you speaking, let me just ask, are you either on behalf of North American or on behalf of the other insurers as well, do you have a view as to whether a trial date should be scheduled at this point?

MR. YALOWITZ: So I would say it would be very helpful to understand what needs to be tried before we start organizing witnesses for trial. I have a stronger view about the amount of time we need to get done with the JPTO motions *in limine*, other pretrial motions, jury instructions, verdict sheet, once we hear from the Court. I think the standard 30 days, maybe your Honor gives 60 days, but that's going to be tight. And so I would be much happier working forward from your decision rather than working backward from a date that then might jam people up quite a bit in terms of trial prep.

THE COURT: All right. That's helpful to know and understandable. Unfortunately, I don't think I'm in a position to know, you know, when I'll be done with this.

MR. YALOWITZ: And that might also be, you know, an argument in favor of taking it in pieces. I think that Mr. Chopra speaks for the trust. He is understandably very anxious to get a trial date. His piece of the case is a lot

less sprawling than the Kessler piece of the case. You know, he is talking about a four-day trial. And one option that the Court might have for case management is to focus on the objections that would deal with whether you need a trial on the trust's issues, and if so then we can decide is it sensible to set a trial date for the trust.

THE COURT: So when you say the trust issues, you are talking about the good faith and intentional misconduct issues?

MR. YALOWITZ: Well, I would refer to Mr. Chopra and Mr. Lahr on what needs to be tried there.

MR. CHOPRA: Your Honor, this is Vivek Chopra for the trust. Can I address the Court on that?

THE COURT: Yes.

MR. CHOPRA: My estimate was kind of four to five on the trust's case in chief, inclusive of openings.

I have two points to make, I think getting a trial date in 2024 would give the Court plenty of time to rule on what is certainly a large project which start with the objections and responses you have in front of you. But it would allow all the parties with plenty of time then between your ruling, your expected ruling and that trial date to prepare the joint pretrial order and motions *in limine*, et cetera.

The advantage of having a trial date is, one, we get it on the calendar and we're not pushed further back by other

litigants who get on the calendar in the interim. I'm extremely concerned about waiting months for the ruling and then convening this group again and then choosing the date for trial. As you know, and I don't want to belabor, the case was filed a significant time ago. Discovery has been completed for some time, and there's just a lot of age on this case. For all those reasons, I'm happy to expand on them if you need, but I don't think you probably do. Getting a trial date would be very helpful.

And just the last point on that, it's not really about organizing designations and motions *in limine*, et cetera. Having that trial date allows all of us to tell people who are busy, our experts, our fact witnesses, claims representatives on the other side, to hold a period of time for us. It's very useful in that regard as well.

MR. WALTERS: Your Honor, Fred Walters. If I may speak to that also on behalf of the class plaintiffs, Mitchell and Kessler?

THE COURT: Yes.

MR. WALTERS: We are in the same camp as Mr. Chopra with respect to the getting a trial setting on that matter. I don't need to repeat what he said, but we think it would be helpful. Given the length of time this trial is going to take, you know your docket but as much more forewarning as we can get. Hopefully, we get this thing scheduled in 2024. Then,

per chance, if those rulings change, hopefully it would just shorten the length of trial and not change it.

Two, with respect to Mr. Yalowitz's comments about some kind of splitting or severing these cases. We don't think that makes any sense at this juncture at all. Most of the issues, other than the reasonableness of the Kessler settlement, all of the other issues overlap, and for the same reasons that the trust contends that there's bad faith, we would also contend that there's bad faith. I mean, consequential damages, other than the amounts, it is the same reason that allows consequential damages would also pertain to the Kessler classes. So we don't think severing this trial, if that's what the suggestion that they were thinking they might socialize, we would not be in favor of that at all. I don't think it makes any sense. It would be a waste of the Court's time and litigant's time to do that after this long period of time.

MR. LAHR: Your Honor, this is Gregory Lahr for Lloyd's defendants. May I just also make a couple points?

THE COURT: Sure.

MR. LAHR: We don't make any comments as to how your Honor might organize the docket and the scheduling of a trial. Though, as on the defense's side we've indicated your Honor's decision will obviously loom large in the party's preparation for that trial. It could be a rather short trial. It could be

a very long trial. But I think irrespective of where your Honor comes out on the motions, unless your Honor is inclined to grant summary judgment and dismiss the case, necessarily there could be and likely would be a trial on the reasonableness of the coverage determinations, which is going to involve a significant number of individuals. The preparation going into the trial and the number of individuals who would appear at trial is really going to be dictated by your Honor's ruling and the outcome of the current objections. And I just think it's very difficult for at least on the defense side to prepare for that, more or less in a vacuum, without being informed by your Honor's decisions and then ultimately what is going to be tried.

THE COURT: When you say the reasonableness of coverage decisions, I didn't understand that to be one of the three issues remaining for trial according to Judge Jones, unless you mean good faith and the duty of cooperation of the insured and intentional misconduct of the insured. Are you talking about something else? Let's just assume, because, you know, the judge spent a lot of time on this, let's assume that I overrule all objections. If that happens, what is the basis for severing the trial?

MR. LAHR: I don't have a view, your Honor, on whether there should be a severance. But to answer your Honor's question on the good faith aspect and the reasonableness of

coverage decisions that essentially goes to the heart of the good faith and fair dealing that the plaintiffs complain of. And the basis for their claim for consequential damages and, you know, whether there's any support for that. So we will need to put evidence on as to the reasonableness of the coverage decisions, because that would inform, to some extent, whether consequential damages are available.

THE COURT: And that's as to both sets of plans?

MR. LAHR: It is.

MR. CHOPRA: Your Honor, not to overload this -- this is Vivek Chopra from the trust, if I could be heard just momentarily on that.

You'll come across it in the papers, Michigan law doesn't require there to be bad faith on part of the insurers for plaintiff to secure consequential damages. The issue of fact that's relevant for consequential damages, and it's in the papers, is going to be whether the parties contemplated that form of damages at the time of contracting.

That said, insurer bad faith will be tried in regards to the plaintiff's claims for attorney's fees. And that's also been briefed, and you'll see it when you get to the objections.

Judge Jones allowed the claims for both consequential damages and attorney's fees to go forward, and they are the subject of objections and responses.

THE COURT: Right.

Let me just ask you before I forget, Judge Jones' decision of December 21, which is about 171 pages, does that cover the waterfront? That covers all the prior decisions. Are there prior decisions of Judge Lane or other prior decisions that are subject of any of the objections? I'll just ask Mr. Chopra.

MR. CHOPRA: Yes, your Honor. There is another ruling. It's a ruling on what the parties call the fees exclusions or the fee exclusions. That was issued by Judge Lane in late 2019. And if you look at Judge Jones' order establishing his report and recommendation, he assigns both Judge Lane's fee exclusions ruling and then Judge Jones' omnibus ruling from December of '22 that you know of to his report and recommendation. And Judge Lane's ruling on the fee exclusions is the subject of two objections from insurers and two responses from the plaintiffs.

THE COURT: OK.

MR. SCHILLER: Judge, this is Ron Schiller for Steadfast, may I briefly speak?

THE COURT: Sure.

MR. SCHILLER: Because, your Honor is obviously just now getting into the papers, I wanted to clarify one thing and to put it in perspective, Steadfast, as well a couple other insurers, are in excess of $400 million here. So when people talk about the reasonableness, since your Honor initially asked

why that would be something your Honor could reach a decision on, you'll see from the papers why that is. But I did want to put in perspective, this is not a question of reasonableness and necessity of the defense counsel or plaintiff's counsel's fees. This was a $300 million agreement entered into between the plaintiffs and bankruptcy court in order to -- our position -- reach insurance.

The only reason I mention that, I don't want to get into the respective parties' positions about the merits or not, but that's why the trial goes from five days to three weeks. Because if that survives, when your Honor has done your work, then the rest of us have to prepare for that. As far as insurers like Steadfast that are excess of $400 million, there should be no bad faith against us. What we're really talking about is whether or not a $300 million agreement is enforceable and reaches us, and because it exhausts in our layer to whatever extent it doesn't if it's in whole than our policies are not reached at all. If it's in part, our policies may not be reached or may be eroded only partially, is an issue that if the Court allows that to go to a jury is necessarily somewhat complex. And we could put aside the issue of how you clarify that and make it straightforward enough for a jury. But the point is, I did want your Honor to understand why we go from five days to three weeks or more.

Secondly, your Honor, to suggest therefore if your

Honor is not going to bifurcate or something like that that your Honor allowed certainly enough time after -- and I know you don't have a date for when you are going to rule on things -- built into this a cushion that allows enough time after rulings so that we all can prepare, and we have witnesses from around the country, can file any necessary documents, pretrial of course. And so while I'm sensitive to the plaintiff and the trust wanting to get to trial as soon as possible, the practical reality is they are making claims on a $300 plus million dollars dispute which also has extra contractual components, and we are going to need time after your Honor rules.

THE COURT: OK. Understood.

Anybody else want to address anything we talked about so far?

MS. DUFFIELD: Your Honor, briefly. This is Cara Duffield on behalf of Twin City. To the extent people are talking about 15 trial days, I have to assume that that is an assumption if Judge Jones' report and recommendation stand. If we assume that the trial needs to encompass every potential fact issue that would come in, if for instance some of Judge Jones' rulings are overturned. So for instance, Judge Jones said there was no bad faith claim against any excess carrier, so that's seven insurers right there. If we assume for purposes of scheduling that that is undone, we are going to

need longer than 15 days. So I think if we are going to try and schedule something then that's just something people need to take into account.

THE COURT: Right. Understood. OK.

MR. YALOWITZ: Your Honor, it's Kent Yalowitz from Arnold & Porter.

To close the loop, what Ms. Duffield says is also germane to the issue of bifurcation in which, I'm not arguing it, I'm just putting a pin in it, there are seven defendants as to whom this is a much narrower case, and it may not be necessary for all. I understand Mr. Walters has claims against the primary insurer. I certainly wasn't suggesting that he would try those separately from Mr. Chopra. I'm just saying that there are seven defendants, as Ms. Duffield points out, who are differently situated.

MR. CHOPRA: Your Honor, this is Vivek Chopra for the trust.

Just to be a bit sharper on that pin, it's likely not seven. The trusts claims alone are about $68 million plus interest. And that would take us beyond the primary policy into what we call the first level excess. And so the Continental, Clarendon, Twin City are, you know, for lack of a better term, kind of in the same boat as the primary insurer when it comes to the trust claims.

So I think Mr. Yalowitz is speaking really to the

interest of the three, kind of, upper level excess above 400 million insurers. To the extent that's going to weigh into it or you've even kind of contemplated where everyone sits in this tower, I wanted to make that point briefly.

THE COURT: How much did you say the claim of the trust is at this point?

MR. CHOPRA: It's $68 million. There is a component of that claim that's framed in the alternative. It's about 23 million that we are pursuing direct damages and in the alternative consequential damages. The easiest way to think about it is it's about $68 million plus interest and fees.

THE COURT: All right.

MR. WALTERS: Your Honor, Fred Walters for the class.

Obviously, our quantification is relatively simple. We had the $300 million Kessler claim and the $14.5 million Mitchell claim. So those, quantification-wise, are reasonable simple to understand.

The 300 million, Mr. Yalowitz and two other carriers are at the fourth excess level above the Bermudans. And the Kessler class with the Mitchell class would reach that fourth excess level. In fact, it doesn't exhaust it, but it would be close to it. Prejudgement interest, as your Honor knows, which would almost double the amount of each claim's prejudgment interest would probably double for us and the trust the actual contract amounts that they owe given the long time this case

has been outstanding.

Again, your Honor, just putting a pin in it or sharper, as Mr. Chopra says, the issues so much overlap that it would make no sense, in our view, to try to sever these cases whatsoever. It just doesn't make any sense given the bad faith allegations and the consequential damages and the attorney's fees, all of which hinge on the same bad faith finding.

And nobody, other than today, this is the first time we've heard anything about any kind of severance. So we are opposed to that in any respect.

I want to try this case once for everybody who is still in the case and then be done with it. And everybody can run out to the Second Circuit or whatever they want to do at that point in time.

MR. YALOWITZ: Your Honor, Kent Yalowitz.

There are many things I suggest that Mr. Walters thinks makes no sense, but let's allow the Court to agree with me. So we understand that might be something that we have to make a motion on.

MR. CHOPRA: Your Honor, if I could. Vivek Chopra, I won't take too much time.

You really don't have to address this severance thing, which would require a lot of input from all of the different parties, most of them aren't ready to provide that input, including the trust. To set schedule a trial date in 2024, the

parties could then kind of grapple with that. They've got that idea, if they want, in the interim. If you were to set a trial date the middle of 2024, you would probably accomplish everything that folks are asking. You would give plenty of time to rule on the objections and the responses. You would give the insurers all the runway they needed, subsequent to that ruling to be ready for that trial. And you would give the trust the certainty that it's requesting and also the ability to tell its experts and others to keep that time on hold. So I make that last final pitch for a date.

THE COURT: I guess I'm not opposed to putting a date on the calendar. If it is well into 2024, you might as well set it, call it three weeks on everybody's calendar and then there could be issues of severance if it ends up being just one of the trials or whatever. Who knows how things will shake out. At least we'll have something on the calendar.

So I guess I'll ask the plaintiff's counsel, did you have a month in mind?

MR. CHOPRA: This is Vivek Chopra for the trust.

I don't have a month to suggest to you that I pre-reviewed. But I would say, June is perfectly good month. If folks are concerned, I would like to go earlier, but I realize that could start a whole ruckus. I think April would be great. To the extent you want to avoid graduation season in May, April, or June would both work for the trust.

MR. WALTERS: Fred Walters for the class plaintiffs, your Honor.

We are fine with April, May, or June of 2024. And we second the fact of getting it on the calendar. We will make that schedule work once the Court sets it, and I think that's enough lead time that all the other defendants could make it work also. So if your schedule permits April, May, or June would work for us.

THE COURT: Before everyone starts focusing on that, the week of June 3rd I'm going to have to be away for a conference. So I could start it after that which would be June 10, but then he would be straddling the July 4 holiday, which I know you guys just ruined your holidays working on these or at least your associates' holidays working on these responses. So the other option is to go after July 4 to do something like July 8 or something like that.

MR. LAHR: Your Honor, this is Greg Lahr for the Lloyd's defendants.

I just think it's very optimistic to think that this is going to be a three-week trial depending on what the outcome is your Honor's determination on the objections. Especially, again, if we get into the good faith issues. We are essentially going to be presenting most or at least a lot of the witnesses whose depositions have been put forth to your Honor. We could be talking about 30 witnesses being involved

in this trial. So I just think we are being a little bit overly optimistic thinking that this is a trial that gets done in three weeks. I just don't see that happening.

THE COURT: How about another idea, it's a little later, but we could sort of rely on it, and that would be to do it, well September is not great. September 9, that's actually a week after Labor Day.

MR. WALTERS: Oh, it is OK. I would say July 8 -- Fred Walters, I'm sorry, for the class plaintiffs -- works for us, and if we could schedule three or four weeks there, that would fine for us. The September date, you just mentioned, also works for us, but we would prefer the earlier if it fits with your schedule.

MR. CHOPRA: This is Vivek Chopra for the trust.

Both those dates work for us.

And to address Mr. Lahr's point, you could set it for four weeks and within the next year you'll obviously rule. The parties will know where they stand, and if it's adjusted back to three weeks or two weeks then people just gain some time on their calendar. But it does give certainty that we have a trial date that is actionable and that we can actually plan against. So I'm happy with July 8 or with that September date that you suggested?

MR. SCHILLER: Your Honor, Ron Schiller.

Just to be clear, we're all sensitive to not giving

you competing calendars. I represent Steadfast, which is not exactly a big player. It's one of the three insurers that you heard has excess of 400 million, and we happen to have 50 million at issue.

I'm just telling you, and this is the last thing I want to be doing with a busy group like this, but I have a trial I'm already attached for on August 6, and one I'm attached for on September 23. So when your Honor said June, I didn't love it, but we can live with June, or we're looking at another time. That's a problem for us. I've been on this case from the beginning.

MR. CHOPRA: Your Honor, this is Vivek Chopra for the trust.

Every lawyer on this case has a good practice, and we're fortunate enough to be in cases in jurisdictions across the country, and we all have scheduling orders. I'm very concerned if we start going down that road. Luckily, for most every party, there are significant-sized firms representing these parties. With enough notice, and we all know motions will be granted and appeals taken and cases settled, I think it will be really difficult to plan against attorney calendars a year out.

MR. SCHILLER: This is Ron Schiller again.

By the way, I said 400. I meant 300.

I totally agree. That's why I almost never bring this

up. But I will be trying this, and I cannot sit here and let the plaintiff's attorney say we can do and pick times in July when I'm attached for two other trials. Because I can't now go to those courts and say, well, I've now been post your trial schedules attached in the Southern District of New York. That's why I mention it. I mean, June is not ideal. I have other things that I would move. I could make June work. And again, and as Mr. Chopra and Mr. Walters know, I will be trying this case for my client.

MR. CHOPRA: June works for the trust, your Honor.

MR. WALTERS: Fred Walters for the class plaintiffs.

June works here also, your Honor. And I agree with Mr. Chopra. It would be difficult, given the number of lawyers here, to schedule that around individual lawyers schedules. We would never get this thing scheduled, probably but we're fine with June, your Honor.

THE COURT: How about June 10?

MR. WALTERS: Fred Walters.

That works here, your Honor.

MR. CHOPRA: This is Vivek Chopra for the trust.

That works.

MR. SCHILLER: That works for Steadfast.

MR. YALOWITZ: That's fine for North American, subject to the issue I raised, Judge, about having time after your summary judgment position to deal with all the logistics.

THE COURT: Right. That was Mr. Yalowitz; right?

MR. YALOWITZ: Yes, sir.

THE COURT: All right. We'll put it down for June 10 for now, and we'll work back from that. I'll set a final pretrial conference a few weeks before that, and then we will have a date. I think probably motions *in limine* will be three weeks for final pretrial conference with responses two weeks before and then I will rule on probably most of the motions *in limine* at the final pretrial conference. I think I'll wait to set the final pretrial conference for now.

MR. CHOPRA: And will you be blocking the four weeks subsequent to that date on your calendar for this trial, your Honor?

THE COURT: Yeah, I'm going to block the four weeks.

THE COURT REPORTER: Sorry. Can you please state your name.

MR. CHOPRA: I apologize, bad habit of mine. This is Vivek Chopra for the trust. I guess I'm just looking forward to being in person so you'll know who we are when we speak.

THE COURT: The final pretrial conference, I do want to do that in person so you all could see the courtroom, and we could talk about where you stand at the podium and those sorts of things during the jury trial. I guess while I have everybody, we might as well put that on the calendar too, that is the final pretrial conference.

I have a jury trial to begin with jury selection on June 10, and I guess we want the final pretrial conference to be a couple weeks before that. We would be looking at late May. How is Thursday, May 30?

MR. WALTERS: Fred Walters for the class plaintiffs. That works, your Honor, for us.

MR. YALOWITZ: Could we do a week earlier, your Honor?

THE COURT: Yes, we probably could.

MR. WALTERS: That's fine with us. Fred Walters, again. That's fine with us also.

MR. ROSENTHAL: Vivek Chopra for the trust. May 23 works, your Honor.

THE COURT: All right. Why don't we say May 23 at 10:00 a.m. for the final pretrial conference.

MR. WALTERS: That's in person, as I understand it?

THE COURT: Yes, in person.

MR. WALTERS: OK. Thank you.

THE COURT: And then what I usually do is work back from that. I realize there could be significant motions *in limine* in this case. I'm going to have the final joint pretrial order as well as any motions *in limine* due three weeks before, which is May 2nd, 2024, which again the joint pretrial order and any motions *in limine* as well as jury instructions and proposed voir dire.

MR. WALTERS: Verdict sheet also?

THE COURT: Verdict sheet, yes.

MR. YALOWITZ: Pretrial trial brief also?

THE COURT: Well, I don't normally require pretrial briefs in jury trial cases.

MR. YALOWITZ: You've all just done summary judgment; you may not want it.

THE COURT: I don't know that I need it. I mean, what I'd say is if you submit your proposed jury instructions, if someone has something they want to say about why the other side's jury instructions need to be changed, you can submit a letter motion afterword, you know, a week later explaining that. But I don't think I need a formal pretrial brief given all the paper that's been spilled on this one.

MR. YALOWITZ: This is Yalowitz, again, Judge. I don't want to micromanage. They're going to be pretty heavy *in limine* motions on both sides. There's just a lot of contention in this case. We might want more than three weeks to give you -- we might want, you know, motions *in limine*, all the usual filings like a month before the final pretrial and then two weeks for responses or something like that.

MR. CHOPRA: Your Honor, this is Vivek Chopra for the trust.

We are actually finding a moment of agreement among the parties here. I wonder if you could issue the dates that you suggested, and how you've obviously set the trial date and

the pretrial conference date. But the parties could meet and confer on a structure like the one that Mr. Yalowitz is suggesting and submit it to the Court for consideration after you've ruled on objections and response.

MR. WALTERS: Fred Walters for the class.

I think Mr. Chopra's suggestion is a good one, your Honor. We've been able to work out the scheduling most times with the defendants.

THE COURT: OK. That's fine.

So for now I'm just going to schedule the final pretrial conference May 23, 10:00 a.m. and the jury trial beginning on June 10. And then I'll have the parties confer regarding specific dates for joint pretrial order, proposed jury instructions, and voir dire, and particularly motions *in limine*. I realized as to the motions *in limine* in particular, it does make sense that you might need a little more time. You might need a little more time. I would like you to give me two weeks though before the final pretrial conference with responses to the motions *in limine* so I could have some time to suggest those.

MR. CHOPRA: Yes, your Honor.

MR. WALTERS: No problem.

THE COURT: All right. And one other question I had is you requested to file things under seal, which is fine. I'm basically going to follow the bankruptcy court sealing ruling.

Let me just ask, are there any objections to any of the motions to seal, letter motions to seal to Mr. Chopra from a few days ago? And then there's, I think, another one from the day before from Mr. Walters. Does anyone object to those motion to seal?

MR. YALOWITZ: Your Honor, it's Kent Yalowitz. We certainly have no objection. I would say before we filed our papers we kind of took a hard look at whether things really need to be filed under seal, and I don't want to impose any new work on people who've done all the work of filing under seal. I just think it's a better practice now that we're really into judicial documents for parties to be judicious about asking the Court to file under seal, and I don't know what your practice is, but it does seem like's it would be best practice to limit these.

MR. CHOPRA: Your Honor, this is Vivek Chopra from the trust. Any defendant who has been reaching out to me on documents that were previously marked confidential, we've agreed to allow them to be published in open court. I will continue to agree. There are a number of insurer documents that were marked, I think somewhat reflexively, as confidential years ago that probably fall into that category and should now be released from that stricture. We will work with the defendants on doing that going forward. We confronted basically the day of and the before filing that we had quoted

some defendant documents in the brief and didn't feel we have had time to kind of pursue that. That's why we filed the letter brief.

THE COURT: That's fine. And I agree with you. My general approach -- I agree with what Mr. Yalowitz said -- generally there's a strong presumption when something is submitted as part of an objection or a summary judgment motion that it's it should be public absent pretty strong countervailing consideration. As a practical matter, I don't really have the time to go through page by page, and line by line to make those determinations when they are not objected to I'm going to provisionally be granting those motions. I do encourage and direct the parties to work toward de-designating things as confidential or highly confidential or whatever. Look, if this is going to trial this stuff is all coming out. Everything coming into trial is going to be public, and the press are going to get copies of it. So you all should know that.

One other question, just as a technical matter, my current law clerk will be moving on. So the law clerk who gets to deal with this in the first instance is happily not here, so she doesn't have to experience what she is going to be going through, but if you add it up, all of the objections and responses, how much pages is it? Can someone just give me an estimate?

MR. WALTERS: Fred Walters for the plaintiffs.

In excess of 800.

THE COURT: OK. So I'm not going to ask you all for courtesy copies, because I'm trying to move away from requiring paralegals to put together all that paper. I don't want to do that anymore.

I notice that Mr. Chopra gave us a disc of the summary judgment filings in the lower court, and I wonder if you all could all work to give me -- not a disc but a thumb drive -- one thumb drive of all the summary judgment filings below, and another thumb drive with all of the un-redacted objections and responses filed by all the parties.

MR. LAHR: This is Gregory Lahr.

Would that include the evidence supporting all those motions as well?

THE COURT: Yes. If you could also include the declaration, anything that's cited in those. As long as they are clearly demarcated, like the files are called either objections, or response, or declaration, you know, in support of objection or response so I could find it. So it would be easier. If you could do that it had would be helpful.

MR. CHOPRA: I'm sure the defendants and plaintiffs could work together and put something together.

MR. WALTERS: Fred Walters for class. We agree. We would be happy to work with the defendants and do that.

THE COURT: Great. Thank you.

Anything else you wanted to address today on the plaintiffs' side. Mr. Walters?

MR. WALTERS: No, your Honor. I don't think so. We appreciate your time.

THE COURT: Thank you.

And Mr. Chopra?

MR. CHOPRA: No, your Honor. Thank you.

THE COURT: Anything else, any of the defendants' counsel?

MR. LAHR: No. Thank you, your Honor.

THE COURT: All right. Thanks everyone. Have a good day. We are adjourned. Bye now.

(Adjourned)